IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

**Crl.Rev.Pet.No. 4216 of 2006()**

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**CRA.669/2005 of SESSIONS COURT, KOZHIKOE**
**CC.526/2004 of JUDL. MAGISTRATE OF FIRST CLASS-II, PERAMBRA**

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REVN. PETITIONER/APPELLANT/ACCUSED:

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K. MUHAMMED, S/O. ALAVI HAJI,
KOOLIYODAN VEEDU, VENGALLUR, P.O. ANAKKAYAM,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

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1. YUSUF, S/O. MAMMU,
KOYAKKEEL VEEDU, P.O. MOOLAD, NADUVANNUR (VIA),
KOYILANDY TALUK, KOZHIKODE DISTRICT.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682031.

R2 BY PUBLIC PROSECUTOR ADV. SHRI KAMMAPPUU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.T. SANKARAN, J.**

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**CRL. R.P. 4216 OF 2006**

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**Dated this the 30th November , 2006**

**O R D E R**

The petitioner, who is the accused in C.C.No. 526 of 2004 on the file of the court of the Judicial Magistrate of the First Class -II, Perambra was found guilty of the offence under section 138 of the Negotiable Instruments Act . He was sentenced to undergo imprisonment till the rising of the court and he was directed to pay a sum of Rs. Two lakhs to the complainant as compensation under section 357(3) of the Code of Criminal Procedure, and in default of payment of compensation, to undergo simple imprisonment for a period of six months. On appeal, the appellate court allowed the appeal in part. The appellate court confirmed the conviction and sentence of imprisonment till the rising of the court, but modified the sentence in default of payment of compensation to a period of three months.

2. The case of the complainant is that the accused was closely acquainted with the complainant and a loan of Rs. Two lakhs was taken from the complainant agreeing that the amount would be repaid within a

period of two months. Ext.P1 cheque dated 10.06.2004 was issued by the accused. On presentation of the cheque, it was dishonoured on the ground that the funds in the account of the accused were insufficient to honour the cheque.

3. The complainant was examined as P.W.1 and Exts. P1 to P6 were marked. It has come out in evidence that the complainant and the accused were working in Saudi Arabia and that they are acquainted with each other. The contention put forward by the accused is that the complainant is a close friend of the proprietor of Salma Travels, Mumbai, that the said Travel Agency was engaged in recruiting persons to Gulf countries, that the proprietor of the Travel Agency had money transaction with the accused and in that transaction a cheque was issued by the accused to the proprietor of Salma Travels. It was contended that the cheque issued to the proprietor of Salma Travels was misused with the help of the complainant and the present complaint was filed.

4. The court below held that on verification of the evidence available, there is no ground to hold that the accused has rebutted the presumption

available under section 139 of the Negotiable Instruments Act. It was held that the issue of the cheque was proved in the case and on verification of the cheque, it is clear that it was issued to the complainant by the accused. No defence evidence was adduced by the accused .

5. Taking into account the facts and circumstances of the case , the trial court awarded only a sentence of imprisonment till the rising of the court . The appellate court considered the evidence and concurred with the view taken by the trial court that the accused has committed an offence under section 138 of the Negotiable Instruments Act . No grounds are made out for invoking the revisional jurisdiction under section 397 of the Code of Criminal Procedure and it is not established that there is any error, illegality or impropriety in the judgments impugned.

6. Learned counsel for the petitioner submits that the petitioner may be granted six months' time to pay the amount of compensation . Since no interference is being made in the conviction and sentence , I do not think it is necessary to issue notice to the first respondent / complainant for the purpose of granting a reasonable time to the accused to pay the amount of compensation . In the facts and circumstances of the case, I am inclined to

grant four months' time to the petitioner to pay the amount of compensation .

In the result, the Crl. Revision Petition is dismissed and the conviction and sentence are confirmed. However, the petitioner is granted four months' time to pay the amount of compensation. If the petitioner has already deposited any amount, he need deposit only the balance amount. The default sentence shall not be executed for a period of four months.

K.T. SANKARAN,
JUDGE.

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